IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3807 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKBARALI USMANALI SAIYED & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MA BUKHARI for Petitioner(s) : 1, 1.2.1,1.2.2 - 4.
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue

Tribunal dated 14th June, 2004 passed in Revision Application No. TEN-AA-74/1991 in dismissing the said revision application as well as the orders passed by the City Survey Superintendent, Ahmedabad, dated 6th July, 1981 passed under Section 37(2) of the Bombay Land Revenue Code and confirming the order passed by the Assistant Collector, Ahmedabad, dated 25th October, 1989 passed in RTS (Review) No. 23/89 as well as the order passed by the Collector, Ahmedabad, dated 31st July, 1991 passed in Appeal No. 34/1990.

2. The dispute is with regard to the land situated at Railwaypura Ward, Ahmedabad, which is situated on the eastern and southern side of C.T.S.No.153 to 161. It appears from the record that the petitioners approached the Collector, Ahmedabad, by making an application dated 19th March, 1981, contending inter-alia, that they are the owners of the land in question, which is in TP Scheme No.5 forming part of the road and the said application was sent to the City Survey Superintendent and the

City Survey Superintendent exercising the powers under Section 37(2) of the Bombay Land Revenue Code directed to mutate their names in the City Survey record by holding that Mustakali Akbarali – the original owner was in possession of the said land since more than 60 years and that the petitioners are the heirs of the said Mustakali Akbarali. The said order came to be passed on 6th July, 1981. The Assistant Collector, Ahmedabad, taken the said order under suo-motu review exercising the powers under Rule 108(6) of the Land Revenue Rules and set aside the order passed by the City Survey Superintendent dated 6th July, 1981 by its order dated 25th October, 1989. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Ahmedabad, dated 25th October, 1989 passed in RTS (Review) No.23/89, the petitioners preferred Appeal before the Collector, Ahmedabad, being Appeal No. 34/1990 and the Collector, Ahmedabad, by its order dated 31st July, 1991 dismissed the said appeal. Being aggrieved and dissatisfied with the same, the petitioners

preferred revision application before the Gujarat Revenue Tribunal being Revision Application No. TEN-AA-74/91 and the Gujarat Revenue Tribunal by its judgment and order dated 30th April, 1997 allowed the said revision application quashing and setting aside the orders passed by the Assistant Collector, Ahmedabad, as well as Collector, Ahmedabad, dated 25th October, 1989 and 31st July, 1991 respectively. It appears that the State Government preferred Special Civil Application No. 4921 of 1998 and the learned Single Judge of this Court (Coram: Hon'ble Mr. Justice Y.B.Bhatt, J., as he then was) by its judgment and order dated 5th July, 1999 allowed the said Special Civil Application quashing and setting aside the order passed by the Gujarat Revenue Tribunal dated 30th April, 1997 and remanded the matter to the Gujarat Revenue Tribunal for fresh decision as the Ahmedabd Municipal Corporation though was affected, was not joined as the party and directed to decide the same afresh after hearing the concerned parties. Thereafter, on remand, the Gujarat Revenue Tribunal

has passed the impugned judgment and order dated 14th June, 2004 dismissing the said revision application quashing and setting aside the order passed by the City Survey Superintendent dated 6th July, 1981 and confirming the order passed by the Assistant Collector, Ahmedabad, as well as the Collected, Ahmedabad, by holding that with regard to the lands in question, the TP Scheme has already implemented and the land in question is already vested with the Ahmedabad Municipal Corporation and therefore, the City Survey Superintendent was not justified in passing the order exercising the powers under Section 37(2) of the Code. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 14th June, 2004 passed in revision application No. TEN-AA-74/1991 in dismissing the same, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri M.A.Bukhari, learned advocate appearing on

behalf of the petitioners has vehemently submitted that the City Survey Superintendent in its order dated 6th July, 1981 has held that the father of the petitioners was in possession of the land since more than 60 years and at that relevant time there was no intention and/or proposal by the Ahmedabad Municipal Corporation with respect of the street/road over the disputed land and therefore, the City Survey Superintendent has rightly exercised the powers under Section 37(2) of the Code. He has also further submitted that an appropriate order be passed that as and when the Ahmedabad Municipal Corporation needs the land either for widening the road or for any other purpose, at that time, the petitioners may be evicted and/or the possession be taken by the Ahmedabad Municipal Corporation and the petitioners will hand over the possession as and when the same is required by the Ahmedabad Municipal Corporation and therefore, it is requested to allow the present Special Civil Application and/or to pass an appropriate order as stated above.

4.Heard the learned advocates appearing on behalf of the parties.

5.It is required to be noted that at the time, when the City Survey Superintendent passed an order, the TP Scheme was already implemented and the land in question was already vested in the Ahmedabad Municipal Corporation and the land in question is the forming part of public road under the finalized TP Scheme. Under the circumstances, the City Survey Superintendent ought not to have passed the order exercising the powers under Section 37(2) of the Code. Once the land is included in the TP Scheme and is vested in the Corporation, the provisions of the Bombay Land Revenue Code would not be applicable and therefore, under the circumstances, the Gujarat Revenue Tribunal has rightly passed an order quashing and setting aside the order passed by the City Survey Superintendent and consequently, confirming the orders passed by the Assistant Collector, Ahmedabad, as well as the Collector, Ahmedabad. This being a petition under Articles 226

and 227 of the Constitution of India and for the reasons stated above and considering the fact that the TP Scheme has already implemented and the lands in question is forming part of the public road under the finalized TP Scheme and that the land in question vests in the Ahmedabad Municipal Corporation, no interference is required of this Court in exercising the powers under Articles 226 and 227 of the Constitution of India. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed. So far as the submission made on behalf of the petitioners that as and when the land is required by the Corporation, they may be directed to hand over the possession and till then their possession be protected is concerned, it is required to be noted that the TP Scheme has become final and the same is not challenged and under the finalized TP Scheme, the lands in question absolutely vested in the Corporation and that land in question is forming part of the public road under the finalized TP Scheme and therefore, the

said prayer also cannot be granted.

6.For the reasons stated above, the present Special Civil Application is dismissed.

(M.R.SHAH, J.)

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